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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/661,371	09/10/2003	Robert L. Doubler	ZMS-G03US	6685
43541 7590 07/10/2008 WOOD, HERRON & EVANS (ZIMMER SPINE) 2700 CAREW TOWER 441 VINE STREET CINCINNATI, OH 45202				
EXAMINER COMSTOCK, DAVID C				
ART UNIT		PAPER NUMBER		
3733				
MAIL DATE		DELIVERY MODE		
07/10/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/661,371

Applicant(s)

DOUBLER ET AL.

Examiner

DAVID COMSTOCK

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 February 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3-9 and 11-25 is/are pending in the application.
- 4a) Of the above claim(s) 3, 4, 7-9, 11 and 12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 5, 6 and 13-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Terminal Disclaimer

The terminal disclaimer filed on 25 October 2007 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of 7,105,029 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Drawings

New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because the drawings filed on 10 September 2003 are informal and have inconsistent, illegible reference numerals and drawing details. However, the replacement sheet showing Figs. 13-16, filed 11 September 2006, is accepted. Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 5, 6, 13-15 and 17-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Li et al. (5,258,015).

Li et al. disclose a linear fastener comprising a shank member, e.g. 160, a collet member, e.g. 168, and a compression ring, e.g. 162 (see, e.g., Fig. 11 and col. 7, lines 29-57). The collet member has a base end, a top end, an inner engaging surface, and an outer tapered compression surface 171. The compression ring has a base end, a front end, an inner tapered compression surface 164 and an outer surface. The inner tapered compression surface of the compression ring is constructed and arranged to cooperate with the outer tapered compression surface of the collet member. In a gripping position, the compression surfaces cooperate to compress the collet to grip the outer surface of the shank member.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 20-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Li et al. (5,258,015).

Li et al. disclose the claimed invention except for explicitly reciting that the device could be formed of materials other than plastic, such as, copper, brass, bronze, aluminum, steel, rubber, etc. However, it would have been obvious to one having

ordinary skill in the art at the time the invention was made to have formed the device of any of numerous known materials, including copper, brass, bronze, aluminum, steel, rubber, etc., e.g. to change the appearance, properties, or cost of the device, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Li et al. (5,258,015) in view of Seyr et al. (2003/0009219)

Li et al. disclose the claimed invention except for the frangible portion. Seyr et al. disclose a fastener 12 having a frangible portion E to facilitate installation and ensure that a predetermined tension is not exceeded (see, e.g., Fig. 1 and paragraph 18). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the fastener of Li et al. with a frangible portion, in view of Seyr et al. in order to facilitate installation and ensure that a predetermined tension is not exceeded.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Comstock whose telephone number is (571) 272-4710 (a detailed message should be left if Examiner is unavailable). If attempts to reach the Examiner by telephone or voicemail are unsuccessful, the examiner's

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supervisor, Eduardo Robert, can be reached at (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/David Comstock/

Examiner, Art Unit 3733

/Anu Ramana/
Primary Examiner, Art Unit 3733